

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RAMON MORALES-GARCIA,

Defendant.

CASE NO. 8:08CR310

TENTATIVE FINDINGS

The Court has received the Revised Modified Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 29). The government adopted the PSR. (Filing No. 28.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the 16-level enhancement in ¶ 12. In applying the enhancement, the probation officer considered the Defendant's prior conviction for burglary of a business as a "crime of violence" under U.S.S.G. § 2L1.2(b)(1)(A)(ii). The objection will be heard at sentencing, and the government has the burden of proof by a preponderance of the evidence. If the parties need more than 30 minutes for the entire sentencing hearing, they should immediately contact Edward Champion and reschedule the hearing.

IT IS ORDERED:

1. The Defendant's Objections to the Revised Modified Presentence Investigation Report (Filing No. 29) will be heard at sentencing;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6th day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge